HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32 (2)(b)

Description of Case

W.P. No. 990 (M/S) year 2001

(Old No. 14946 of 1998)

State of U.P. and others

Versus

Presiding Officer, Labour Court and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 9.10.2003.

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 990(M/s)2001[14946 of 1998]

(1) State of U.P.
(2) Director, State Engineer's
Academy Kalagarh, Pauri Garhwal.
(3) Deputy Director, State
Engineer's Academy, Kalagarh,
Pauri Garhwal. ……Petitioners

Vs.

(1) Presiding Officer, Labour
Court, U.P Dehradun
(2) Mangal Singh S/o Udai
Singh Village- Meerapur North
P.O- Kalluwala
Disst. Bijnor. U.P ….. Respondents

Chief standing counsel for the petitioner

Dated:9-10-2003

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioners have prayed for the issue of a writ order or direction in the nature of certiorari quashing the order dated on 20-6-97.

Brief facts giving rise to the aforesaid writ petition are that the respondent No.2 was a work charged employee and by virtue of the order passed by the state of U.P dated 7.2.97 daily wage employees were entitled to be regularised, who has completed 240 days of work on or before 1.1.1993 and further who were in continuous service even on the date of the order i.e 7.2-97. It was also mentioned that for daily wage employees seniority as well as suitability will be the criteria for putting them under work charged employment. In order to decide the suitability and seniority a Committee of superintending Engineer, Executive Engineer, and three assistant engineer has to be constituted on the chairmanship of superintending engineer in each circle.

It was also stated that the orders dated on 7-2-97 and 24-2-97 were issued in compliance of the order passed by the Apex Court in case of Raj Narain Prasad Vs. State of U.P Civil Misc. writ petition No. 140/89 in which on 18-1-96 the following orders was passed are quoted below:-

"*That takes us to the question regarding the regularization of master roll employees. Because they can only stand next to work charge employees we would recommend that they could be absorbed as work charge employees to the extent or at a certain percentage of posts falling vacant at the latter being regularized under the scheme. That would satisfy a certain percentage of the category of daily wage /master roll employees also. We would like the State to undertake somehow of the cadre strength by March this year and thereafter in December every year so that budgetary support could be provided for in the next financial year for the added strength to the cadre. With these observations and recommendation we approve the scheme but we would once again impress upon the State that the spirit of our*

observations in piara Singh's case should be observed. The petitioners shall stand disposed of accordingly.

New Delhi (January 18,1996)

The State of U.P has challenged the award on the ground that the respondent No.2 are daily wage employees has no right/lien to the post. It was also stated that the respondent No-2 was not working in the organization as class IV employees on 1-1-93.

The presiding officer labour court has passed the order that the termination of the respondent No. 2 from 13-September 1998 was wholly illegal and the direction was also made for restatement with back wages of 50%. The presiding officer has also directed that the employee concerned may be taken in the category of work charge employee. The findings of the Prescribed Authority are quoted below:-

सेवायोजकों द्धारा प्रस्तुत वादी श्रमिक के कार्यदिवसों के विवरण से प्रकट होता है कि उसने वर्ष 1983 में फरवरी से दिसम्बर माह तक 252 दिन, वर्ष 1984 में जून–सितम्बर महीनों को छोड़कर शेष महीनों में 188 दिन, 1985 में 57 दिन व 1986 में 31 दिन काम किया तथा वर्ष 1988 में किसी भी माह में काम नहीं किया। सेवायोजकों को कथन है कि चूँकि श्रमिक सितम्बर 88 में कार्यरत ही नही था अतः 30–9–88 को कोई काज आफ ऐक्श ही पैदा न होने के कारण संदभदिश विधि निकृष्ट है। यह तो स्पष्ट ही है कि वादी श्रमिक 1983 से सेवायोजको के नियोजन में था। अतः 1984 से आगे के वर्षों में सभी माहों में उसकी उपस्थिति दर्ज न होने में उसका कोई दोष नही है क्योंकि रजिस्टर तो सेवायोजको की ही सुरक्षा में रहते हैं।

माननीय उच्च न्यायालय इलाहाबाद ने रविन्द्र पाल सिंह बनाम स्टेट बैंक यू0पी0 व अन्य में। नवम्बर 93 के निर्णय एफ0 एल आर 1994 वाल्यूम 69 पृष्ट 122 प्रस्तर (9) में यह कहा है कि यदि श्रमिक किसी भी वर्ष 240 दिन से अधिक काम कर लेता है तो उ0प्र0 औघोगिक विवाद अधिनियम की धारा 6–एन मे दिये संरक्ष्ण का अधिकारी हो जाता है।

मेरा ध्यान उ0प्र0 शासन के सिंचाई विभाग द्वारा जारी शासनदेश सं0 402/का0प्र0अ0प्र0/डी–2दिनांक 24–2–97 की और आकर्षित किया गया जिसमें यह निर्देश दिये गये है कि वर्ष 1985 से पूर्व व 1986 से 1990 की अवधि में कार्यरत की जायें। इस शासनादेश के तहत भी वादी श्रमिक लाभ पाने का अधिकारी है।

अतः मैं अभिनिर्णय देता हुॅ कि सेवायोजको द्वारा अपने श्रमिक मंगल सिंह, दैनिक वेतन भोगी चौकीदार की सेवायें दि030–9–98 से छअनी द्वारा समाप्त किया जाना अनुचित व अवैधानिक है और यह निर्देश देता हुॅ कि उसे सेवा में पुर्नस्थापित किया जायें व पिछली अवधि का 50 प्रतिशत वेतन दिया जाये व उपरोक्त प्रस्तर में उल्लिखित शासनादेश के अनुसार श्रमिक को वर्कचार्ज अधिष्ठान में लिया जायें।

A perusal of the order shows that the respondent No.2 has completed more than 240 days.

The presiding officer has also come to the conclusion that the respondent No.2 has worked for more than 240 days and therefore the present dispute is fully covered under the U.P Industrial dispute Act and the respondent No.2 was entitled for the benefit of having worked for more than 240 days. He is liable to be absorbed in the employee of work charged category.

I find no infirmity in the order passed by the presiding officer. So as to interfere under Article 226 of the Constitution of India.

The observations of the Apex Court in Raj Narain Prasad and others Vs. The State of U.P and others writ petition No. 140/89 are as under:-

"That takes us to the question regarding the regularization of muster roll employees. Because they can only stand next to work charged employees. we would recommend that they could be absorbed as work charge employee to the extent or at a certain percentage of posts falling vacant at the latter being regularized

under the scheme. That would satisfy a certain percentage of the category of daily wage/muster roll employees also. We would like the State to undertake somehow of the cadre strength by March this year and thereafter in December every year so that budgetary support could be provided for in the next financial year for the added strength to the cadre. With these observations and recommendations we approve the scheme but we would once again impress upon the State that the spirit of our observations in Piara Singh's case should be observed. The petitions shall stand disposed of accordingly."

There is also on the record the affidavit filed by respondent No.2 on paragraph No. 8, 9,10 which reads as under.-

Paragraph-8 *"That the chief Engineer (Uttarakhand), Dehradun (Uttaranchal) had Chief Engineer/Director who is also submitted to work as Director of Academy, Kalagarh), instructed the authorities concerned vide their letter No.435/mu.Ac.(O.Kha) at 30-12-2000-N. 5917/mu.As dated 15-1-2001 to regularize/aboisbe the muster roll employees in work charge establishment as per judgment of Hon.Supreme Court and C.O.Bo.691dated 7-2-97 aforesaid letter are enclosed as annexure no. 5 and to the supplementary aforesaid.*

Paragraph-9 *"That it is submitted the authorities concerned have assured the deponents on 24-1-2001 to issue the becessary order regarding regularization/ as operation in the work charge establishment very shortly. The letter or deponent addressed to Chief Engineer / Director in appreciation of the geusturo is enclosed as annexure no. 7 to the supplementary aforesaid affidavit.*

Paragraph-10 *"That to create condusive atmosphere and goodwill have decided fully and finally to withdraw the claim of Back-wages/Writ expenses, if the Director or Deputy Director State Engineering Academy Kalagarh. Pauri Garhwal do the best of*

regularization of work charge Employees and Muster roll Labour Employee in the Project above."

Standing counsel has also informed that in view of the Award passed by the presiding office labour court, employee concern is regularly working.

Further it made clear that if the respondent No.2 has received any benefits arising out of the order of Presiding officer, the same will not come in his way and he will be entitled to have the fruits of the order passed by the labour court.

Further in view of the statement made aforesaid in paragraph 9 and 10 of the Counter Affidavit. The respondent No.2 will not be entitled to claim further any benefits with regard to the back wages.

In view of the aforesaid facts the authorities concern having already complied the order passed by the presiding officer labour court and has also paid back wages, and find no infirmity in the order passed by the Presiding officer Labour Court. Consequently no interference is made under Article 226 of the Constitution of India.

With the aforesaid observations the writ petition is dismissed. There will be no order is to costs.

(Rajesh Tandon, J.)

Dated:-9-10-2003

Mohit